

Civil Liability

Professional Indemnity Insurance Policy

POLICY

QIM814

This Policy is underwritten by QBE Insurance (Australia) Limited
ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street, Sydney



About this booklet

This booklet contains 2 separate parts:

General Information and the Policy Terms and Conditions.

General Information

This part of the booklet contains information you need to know before you take out a Policy. Please read it carefully before taking out this insurance.

Policy Terms and Conditions

The Policy part of this booklet contains the Policy Terms and Conditions, which detail all the terms, conditions and exclusions relating to the Policy. It forms part of your legal contract with us.

If we issue you with an insurance policy, you will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Policy Schedule we send to you form your legal contract with us so please keep them in a safe place for future reference.

If you require further information about this product, please contact your Financial Services Provider.

About QBE Australia

QBE Insurance (Australia) Limited is a member of the QBE Insurance Group (ASX: QBE). QBE Insurance Group is Australia's largest international general insurance and reinsurance group, and one of the top 25 insurers and reinsurers worldwide. The company has been operating in Australia since 1886 and continues to provide industry-leading insurance solutions that are focused on the needs of intermediaries and their clients.

QBE is a household name in Australian insurance, backed by sizeable assets, and well known as a strong and financially secure organisation.

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GENERAL INFORMATION FOR PROFESSIONAL INDEMNITY POLICY

The information contained in this part is general information only and does not form part of your contract with us. The Policy Terms and Conditions in the rest of this booklet contain details of your contract.

Duty of Disclosure – What you must tell us

Under the Insurance Contracts Act 1984 (the Act), you have a Duty of Disclosure. You are required before you enter into, renew, vary, extend or reinstate your Policy, to tell us everything you know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to our decision whether to insure you, and anyone else to be insured under the Policy, and if so, on what terms.

- **You do not have to tell us about any matter**
 - that diminishes the risk
 - that is of common knowledge
 - that we know or should know in the ordinary course of our business as an insurer, or
 - which we indicate we do not want to know.
- **If you do not tell us**

If you do not comply with your Duty of Disclosure we may reduce or refuse to pay a claim or cancel your Policy. If your non-disclosure is fraudulent we may treat this Policy as never having worked.

Privacy

Privacy legislation regulates the way private sector organisations can collect, use, keep secure and disclose personal information. We are bound by the Privacy Act 1988 (Cth.), when collecting and handling your personal information. QBE has developed a privacy policy which explains what sort of personal information we hold about you and what we do with it.

We will only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance policy, including any claims you make. We will only use and disclose your personal information for a purpose you would reasonably expect.

We may need to disclose personal information to our reinsurers, (who may be located overseas), insurance intermediaries, insurance reference bureaux, credit reference agencies, our advisers and those involved in the claims handling process (including assessors and investigators), for the purposes of assisting us and them in providing relevant services and products, or for the purposes of litigation. We may disclose personal information to people listed as co-insured on your policy and to family members or agents authorised by you. We may also disclose information to organisations which conduct customer service surveys on our behalf. We will request your consent to any other purpose.

By providing your personal information to us, you consent to us making these disclosures. Without your personal information we may not be able to issue insurance cover to you or process your claim.

You also have the opportunity to find out what personal information we hold about you and, when necessary, correct any errors in this information. Generally we will do this without restriction or charge. For further information about our Privacy Policy or to access or correct your personal information, please contact The Compliance Manager, QBE Insurance (Australia) Limited, GPO Box 82 Sydney NSW 2001. Telephone: (02) 9375-4656, Fax: (02) 8275-9022 or Email: compliance.manager@qbe.com

The General Insurance Code of Practice

QBE Insurance (Australia) Limited is a signatory to the General Insurance Code of Practice. The Code aims to:

- promote more informed relations between insurers and their customers;
- improve consumer confidence in the general insurance industry;
- provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- commit insurers and the professionals they rely upon to higher standards of customer service.

Dispute resolution

We will do everything possible to provide a quality service to you. However, we recognise that occasionally there may be some aspect of our service or a decision we have made that you wish to query or draw to our attention.

We have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to your complaint within 15 working days.

If you would like to make a complaint or access our internal dispute resolution service please contact your nearest QBE office and ask to speak to a dispute resolution specialist.

Claims made

This Policy operates on a 'claims made and notified' basis. This means that the Policy covers you for claims made against you and notified to us during the period of insurance.

The Policy does not provide cover in relation to:

- acts, errors or omissions actually or allegedly committed prior to the retroactive date of the Policy (if such a date is specified)
- claims made after the expiry of the period of insurance even though the event giving rise to the claim may have occurred during the period of insurance
- claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy
- claims made, threatened or intimated against you prior to the commencement of the period of insurance
- facts or circumstances of which you first became aware prior to the period of insurance, and which you knew or ought reasonably to have known had the potential to give rise to a claim under this Policy

- claims arising out of circumstances noted on the proposal form for the current period of insurance or on any previous proposal form.

Where you give notice in writing to us of any facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of those facts but before the expiry of the period of insurance, you may have rights under Section 40(3) of the Insurance Contracts Act 1984 to be indemnified in respect of any claim subsequently made against you arising from those facts notwithstanding that the claim is made after the expiry of the period of insurance. Any such rights arise under the legislation only. The terms of the policy and the effect of the policy is that you are not covered for claims made against you after the expiry of the period of insurance.

POLICY TERMS AND CONDITIONS FOR PROFESSIONAL INDEMNITY POLICY

Preamble

In consideration of payment of the Premium, QBE will provide indemnity in accordance with, and subject to, the terms of this Policy.

Insurer

The Policy is underwritten by QBE Insurance (Australia) Limited, ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street, Sydney.

Our agreement with you

This Policy is a legal contract between you and us. You pay us the premium, and we provide you with the cover you have chosen as set out in the Policy, occurring during the period of insurance shown on your Policy Schedule or any renewal period.

The amount of any deductible that applies to your Policy will be shown on your Policy Schedule.

The exclusions in the section(s) headed 'When you are not covered' and conditions in the section headed 'General Conditions' apply to all sections of this Policy.

Your Policy

Your Civil Liability Policy consists of the Policy Terms and Conditions in this booklet and the Policy Schedule we give you.

Please read your Policy carefully, and satisfy yourself that it provides the cover you require.

If you want more information about any part of your Policy, please ask us, or your Financial Services Provider.

The address and telephone number of your QBE branch are on your Policy Schedule.

You should keep your Policy Booklet and Policy Schedule together in a safe and convenient place for future reference.

Preventing our right of recovery

If you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability which is covered by this Policy, we will not cover you under this Policy for that loss, damage or liability.

How Goods and Services Tax affects any payments we make

We will reduce the GST amount we pay for by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number & Taxable Percentage.

Section 1: Insuring Clauses

Insuring Clause A

1.1 Civil liability insuring clause

QBE agrees to indemnify the Insured against civil liability for compensation arising from any Claim first made against the Insured during the Period of cover and notified to QBE during the Period of cover as a result of a breach of professional duty in the conduct of the Insured's profession.

Insuring Clause B

1.2 Costs & expenses insuring clause

QBE agrees to pay Costs & expenses incurred with the written consent of QBE in the defence or settlement of any Claim indemnified by this Policy.

Insuring Clause Clarification

For the avoidance of doubt, indemnity is provided in respect of the following in accordance with, and subject to, the terms of this Policy, including Insuring Clauses A and B (clauses 1.1 and 1.2).

1.3 Intellectual property

QBE agrees to indemnify the Insured against civil liability for compensation arising from any Claim made against the Insured for any unintentional infringement of copyright, trademark, registered design or patent, or any plagiarism or breach of confidentiality.

1.4 Defamation

QBE agrees to indemnify the Insured against civil liability for compensation arising from any Claim made against the Insured for defamation.

1.5 Outgoing principals

QBE agrees to indemnify former principals, partners, directors and Employee(s) of the Named insured in respect of civil liability insured by Insuring Clauses A & B PROVIDED ALWAYS THAT the definition of the Insured (clause 7.11) includes those persons and only in respect of work performed while a principal, partner, director or Employee of the Named insured.

1.6 Retroactive date

- (a) "Unlimited Retroactive Cover" – if no Retroactive date is specified in the Schedule or if the Retroactive date is specified in the Schedule as "Unlimited", this Policy shall provide indemnity in respect of Claim(s) arising from acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).
- (b) "Limited Retroactive Cover" – where a Retroactive date is specified in the Schedule, then this Policy shall only provide indemnity in respect of Claim(s) arising from acts, errors or omissions committed or alleged to have been committed after the Retroactive date.

1.7 Trade Practices and related legislation

QBE agrees to indemnify the Insured against civil liability for compensation arising from any Claim made against the Insured under the terms of the Trade Practices Act 1974 (Commonwealth), the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria) or similar legislation enacted by the other states or territories of the Commonwealth of Australia or the Dominion of New Zealand.

Section 2: Policy Extensions

Preamble

QBE shall provide indemnity as is available under this Section, for no additional premium, PROVIDED ALWAYS THAT:

- (a) the indemnity provided by each Policy Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein);
- (b) the inclusion of any Policy Extension shall not increase the Limit of indemnity;
- (c) where a Policy Extension is not specified as included in the Schedule then this Policy shall not provide any indemnity in relation to coverage specified under such Policy Extension.

2.1 Estates and legal representatives

QBE agrees to include in the definition of the Insured (clause 7.11) the estate, heirs, legal representatives or assigns of any Insured in the event of the death or incapacity of such Insured in respect of a civil liability of the Insured that would have been covered by Insuring Clause A or B if the Insured was alive or had capacity. PROVIDED ALWAYS THAT such persons shall observe and be subject to all the terms of this Policy insofar as they can apply.

2.2 Fraud and dishonesty

QBE agrees to indemnify the Insured against civil liability for compensation arising from any Claim made against that Insured, which would otherwise be excluded by reason of Exclusion 4.8 (Fraud and dishonesty). PROVIDED ALWAYS THAT:

- (a) such indemnity shall not be provided to any Insured who committed or condoned any act, error or omission excluded by reason of Exclusion 4.8 (Fraud and dishonesty);
- (b) such indemnity shall not apply to any Claim against any Insured directly or indirectly based upon, attributable to, or in consequence of:
 - (i) the loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes;
 - (ii) the loss of an electronic record which represents a current and transferable obligation of a person to pay the holder of the electronic record an amount or amounts of money described in the electronic record in exchange for delivery, adjustment or cancellation of the electronic record; or

- (iii) a transaction, direction or dealing involving or in any way relating to a right to be paid money or to have any of the items referred to in subparagraph (i) or (ii) of this paragraph (b) delivered, negotiated or assigned or an electronic record of such a right.

2.3 Loss of documents

QBE agrees to indemnify the Insured in respect of certain loss described in this clause arising from the loss of any Documents (including but not limited to Documents which are the property of the Insured) which have been destroyed, damaged, lost or mislaid and, after diligent search and attempt to recover, cannot be found. PROVIDED ALWAYS THAT:

- (a) the discovery of such loss of Documents occurred during the Period of cover and was notified in writing to QBE within twenty eight (28) days after the date of such discovery (but never beyond the expiry date of the Period of cover); and
- (b) such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring such Documents and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by QBE with the approval of the Insured; and
- (c) QBE shall not be liable under this Policy Extension to provide indemnity in respect of that proportion of any costs, charges and expenses of whatsoever nature arising directly or indirectly out of:
 - (i) corruption, erasure, theft, alteration of, or
 - (ii) access or lack of access to, or
 - (iii) interference with electronically stored data of the Insured or held by the Insured wholly or partly caused by:
 - any computer virus; or
 - any person who is not a current principal, partner, director or Employee of the Insured

where such costs, charges and expenses relate to the Insured replacing and/or restoring such data after a period of 48 hours following the time when the virus or act took effect; and

- (d) such indemnity shall be limited to the loss of any Documents:
 - (i) which were in the physical custody or control of the Insured or any person to whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of business; and
 - (ii) which occurred within the territorial limits of the Commonwealth of Australia or the Dominion of New Zealand; and
- (e) QBE's aggregate liability in respect of all losses under this Policy Extension shall not exceed:
 - (i) the sub-limit shown in the Schedule for Loss of documents; or
 - (ii) if no amount is shown, the sum of \$100,000.

2.4 Newly created subsidiary

QBE agrees to include in the definition of Insured (clause 7.11) any Subsidiary created by the Named insured during the Period of cover for a period of up to fourteen (14) days (but never beyond the expiry date of the Period of cover) from the date of such creation.

PROVIDED ALWAYS THAT this Policy Extension will only apply in respect of Claim(s) against the Subsidiary arising from an act, error or omission occurring subsequent to the date of creation of the Subsidiary.

2.5 Official investigations & enquiries – costs & expenses

QBE agrees to pay Investigation costs & expenses.

PROVIDED ALWAYS THAT:

- (a) QBE shall be entitled, at its discretion, to appoint legal representation to represent the Insured in the investigation, examination or enquiry;
- (b) the investigation, examination or enquiry, or notice of intended investigation, examination or enquiry is commenced during the Period of cover and is notified to QBE during the same Period of cover;
- (c) in the event that a claim for payment of Investigation costs & expenses is withdrawn or indemnity under this Policy is subsequently withdrawn or denied, QBE shall cease to advance Investigation costs & expenses and the Insured shall refund any Investigation costs & expenses advanced by QBE to the extent that QBE is satisfied that the Insured was not entitled to such Investigation costs & expenses, unless QBE agrees in writing to waive recovery of such Investigation costs & expenses; and
- (d) QBE's total liability in respect of Investigation costs & expenses for all claims made under this Policy Extension shall not exceed \$25,000.

For the purpose of this Policy Extension, an official investigation, examination or enquiry includes an investigation, examination or enquiry by way of a Royal Commission or Coronial Enquiry or conducted by a regulatory authority such as the Australian Securities and Investments Commission but does not include any investigation, examination or enquiry conducted by a parliament or any disciplinary committee of any association or professional body of which the Insured is a member.

2.6 Run off cover insured entity

QBE agrees that in the event that an Insured entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the coverage provided under this Policy with respect to such Insured entity shall continue until the expiry date of the Period of cover.

PROVIDED ALWAYS THAT such coverage shall only apply in respect of Claim(s) arising from an act, error or omission occurring prior to the effective date that such Insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

2.7 Severability

QBE agrees that:

- (a) where this Policy insures more than one Named insured, any conduct on the part of any party who is an Insured whereby such party:
 - (i) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
 - (ii) made a misrepresentation to QBE before this contract of insurance was entered into,

shall not prejudice the right of any other Named insured to indemnity as may be provided by this Policy. PROVIDED ALWAYS THAT:

- (i) such other Insured shall be entirely innocent of and have no prior knowledge of any such conduct;
 - (ii) such other Insured shall, as soon as is reasonably practicable upon becoming aware of any such conduct, advise QBE in writing of all known facts in relation to such conduct; or
- (b) where this Policy insures one or more Named insured(s) any conduct on the part of any party who is an Insured within a Named insured whereby such party:
 - (i) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
 - (ii) made a misrepresentation to QBE before this contract of insurance was entered into,

shall not prejudice the right of any other Insured to indemnity as may be provided by this Policy. PROVIDED ALWAYS THAT:

- (i) such other Insured shall be entirely innocent of and have no prior knowledge of any such conduct;
- (ii) such other Insured shall, as soon as is reasonably practicable upon becoming aware of any such conduct, advise QBE in writing of all known facts in relation to such conduct; and
- (iii) enquiry has been made, before the contract of insurance was entered into with QBE, of the entities and persons referred to in clause 7.11(a) and (b) of the definition of the Insured for the purposes of complying with the duty of disclosure under the Insurance Contracts Act 1984. For the sake of clarity, this provision is not intended to limit the Insured's duty of disclosure owed by the entities or persons referred to in clause 7.11(a) and (b).

Section 3: Optional Extensions

Preamble

It is agreed that:

- (a) the indemnity provided by each Optional Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein);

- (b) other than by operation of Optional Extension 3.1 (Aggregate limit of indemnity), the inclusion of any Optional Extension shall not increase the Limit of indemnity; and
- (c) where an Optional Extension is not specified as included in the Schedule then this Policy shall not provide any indemnity in relation to coverage specified under such Optional Extension.

3.1 Aggregate limit of indemnity

QBE agrees to be liable under this Policy up to the Aggregate limit of indemnity PROVIDED ALWAYS THAT QBE's total liability under this Policy shall not exceed:

- (a) in respect of any one Claim covered by this Policy, the Limit of indemnity as specified in the Schedule; and
- (b) in respect of all Claim(s) covered by this Policy, the Aggregate limit of indemnity.

3.2 Fidelity

QBE agrees to provide indemnity to the Insured against loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Insured or for which the Insured is legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any Insured. PROVIDED ALWAYS THAT:

- (a) such loss is first discovered by the Insured during the Period of cover and is notified in writing to QBE within twenty-eight (28) days of the date of such discovery (but never beyond the expiry date of the Period of cover);
- (b) QBE shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the Insured concerned;
- (c) QBE shall not be liable to indemnify any Insured who committed or condoned any dishonest or fraudulent conduct in consequence of which the loss occurred;
- (d) the Insured shall bear the burden of adducing satisfactory proof to substantiate any loss hereunder (including any legal, investigative, accounting or other costs incurred in such process) and QBE will be under no obligation to provide indemnity to the Insured until such time as QBE is satisfied that such loss has, in fact, been sustained;
- (e) the Deductible shall apply to each and every individual dishonest or fraudulent act or omission; and
- (f) QBE's liability for each loss under this Optional Extension and QBE's aggregate liability for all losses under this Optional Extension shall not exceed \$100,000.

3.3 Previous business

QBE agrees to provide indemnity in respect of any Claim for compensation made against any person who is or becomes or ceases to be during the Period of cover a principal, partner or director of the Named insured for any civil liability arising from a breach of professional duty and incurred on the part of such person in the conduct of the same profession as the Insured's profession before that person joined the Named insured.

Section 4: Exclusions

QBE shall not be liable under this Policy to provide indemnity in respect of any Claim against any Insured:

4.1 Aircraft and watercraft

directly or indirectly based upon, attributable to, or in consequence of the ownership, lease, operation or use of any aircraft or watercraft by an Insured.

4.2 Assumed duty or obligation

directly or indirectly based upon, attributable to, or in consequence of any duty or obligation assumed by an Insured by way of contract, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability the Insured would have incurred in the absence of such contract, warranty, guarantee or indemnity.

4.3 Bodily injury

directly or indirectly based upon, attributable to, or in consequence of Bodily injury when such injury occurs at any time during the actual provision of the services of the Insured's profession by or on behalf of the Insured.

4.4 Conflict

directly or indirectly based upon, attributable to, or in consequence of a Conflict.

PROVIDED ALWAYS THAT:

- (a) this Exclusion does not derogate from or limit Exclusion 4.8 (Fraud and dishonesty); and
- (b) this Exclusion shall not apply where the Conflict arises from the Insured's provision, or alleged provision, of services to more than one client (which term in this subparagraph includes former clients) and the Insured obtains a signed and dated document from each client prior to providing professional services acknowledging that the Insured may also be involved with another client whose interests may be different from those of the client in question.

4.5 Asbestos

directly or indirectly based upon, attributable to, or in consequence of the manufacturing, mining, processing, treating, handling, installing, using, removing, transporting, selling, distributing, and/or storage of asbestos, asbestos products or any product containing asbestos.

PROVIDED ALWAYS THAT this exclusion shall not apply to any Claim or part of a Claim for financial loss arising out of a breach of professional duty where the cause of the breach does not relate to any asbestos exposure. Further this exclusion shall not apply to any medical procedure or treatment performed in a hospital, clinic or similar establishment as a result of any injuries arising out of any effects of asbestos as described in the above paragraph.

4.6 Financial interest

directly or indirectly based upon, attributable to or in consequence of any actual or alleged:

- (a) advice;

- (b) inducement;
- (c) recommendation;
- (d) endorsement; or
- (e) other service

provided by an Insured regarding investment in, work for, or lending to:

- (i) an Insured;
- (ii) any entity operated or controlled by an Insured;
- (iii) any Subsidiary, nominee, trustee or Family member of an Insured; or
- (iv) any entity in which an Insured or any Subsidiary, nominee of an Insured, trustee of an Insured or Family member has a direct or indirect financial interest other than a Minor interest.

4.7 Fines and penalties

for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law including but not limited to, civil penalties.

4.8 Fraud and dishonesty

directly or indirectly based upon, attributable to, or in consequence of:

- (a) any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of an Insured or their consultants, sub-contractors or agents; or
- (b) any act or omission of an Insured or their consultants, sub-contractors, or agents committed or alleged to have been committed with a reckless disregard for the consequences thereof; or
- (c) any wilful breach of any statute, contract or duty by an Insured or their consultants, sub-contractors or agents.

4.9 Jurisdictional limits

- (a) brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- (b) arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

4.10 Nuclear

directly or indirectly based upon, attributable to, or in consequence of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel.

4.11 Obligations to employees

directly or indirectly based upon, attributable to, or in consequence of Bodily injury of any Employee of an Insured or damage to or destruction of any property of any Employee of an Insured, including loss of use of property, arising out of, or in the course of, their employment.

4.12 Occupier's liability

directly or indirectly based upon, attributable to, or in consequence of any liability incurred or alleged to have been incurred as a result of occupation, control, management or ownership of any real property by an Insured.

4.13 Pollutants

directly or indirectly based upon, attributable to, or in consequence of:

- (a) the actual or alleged discharge, release or escape of Pollutants arising from the design or specification of equipment or structures which are critical to, and designed with the intention of, restricting the release of Pollutants into the environment; or
- (b) any enforcement action or proceeding in connection with the containment, clean up, removal or treatment of such Pollutants.

PROVIDED ALWAYS THAT:

Exclusions (a) and (b) do not apply where there has been a sudden and accidental release of Pollutants caused by error in design or specification.

4.14 Prior or pending

- (a) made, threatened or intimated against an Insured prior to the Period of cover; or
- (b) directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance:
 - (i) of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
 - (ii) of which an Insured first became aware prior to the Period of cover, and which such Insured knew or ought reasonably to have known had potential to give rise to a Claim under this Policy.

4.15 Related or associated entities

brought or maintained by or on behalf of:

- (a) an Insured or any Subsidiary or parent of an Insured; or
- (b) any person who, at the time of the act, error or omission giving rise to the Claim is a Family member unless such person is acting without any prior direct or indirect solicitation or co-operation of an Insured.

4.16 Territorial limits

directly or indirectly based upon, attributable to, or in consequence of an act, error or omission occurring within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

4.17 Terrorism

directly or indirectly based upon, attributable to, or in consequence of any actual or alleged act of Terrorism or any action taken in controlling, preventing, suppressing or in any way relating to any actual or alleged act of Terrorism.

This Exclusion operates in connection with any act of Terrorism regardless of any other cause or event and regardless of the sequence of the act of Terrorism and the other cause or event.

If QBE asserts that this Exclusion applies, then in any action, suit, proceedings or claim brought by or on behalf of the Insured in connection with this Exclusion, the burden of proving that this Exclusion does not operate shall be upon the Insured. QBE is not required to prove that this Exclusion applies. If the Insured brings any action, suit, proceedings, or claim against QBE in connection with the operation of this Exclusion, and the Insured does not prove that this Exclusion does not apply, the Insured shall pay QBE's costs of responding to the action, suit, proceedings or claim on an indemnity basis. This Exclusion is in addition to, and not in derogation of, any other exclusion in the Policy or in any other endorsement.

4.18 Trading debts

directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by an Insured or any guarantee given by an Insured for a debt.

4.19 War

directly or indirectly based upon, attributable to, or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition of or damage to property by or under the order of any government, public or local authority.

Section 5: Claims Conditions**5.1 Claims mitigation and co-operation**

- (a) If the Insured, either prior to or during the Period of cover becomes aware of a situation which could, if not rectified, lead to a Claim or increase the quantum of a Claim, the Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.
- (b) The Insured shall frankly and honestly disclose to QBE all relevant information and, in addition shall provide assistance to QBE, as it may require to enable it to investigate and to defend any Claim under this Policy and/or to enable QBE to determine its liability under this Policy.
- (c) Other than costs & expenses incurred by QBE to enable QBE to determine its liability under this Policy, compliance with this Condition shall be at the Insured's own cost, unless otherwise agreed in writing by QBE.

5.2 Defence and settlement

- (a) The Insured agrees not to settle any Claim, incur any Costs & expenses or Investigation costs & expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim or loss without QBE's written consent, such consent not to be unreasonably withheld. QBE shall not be liable for any settlement, Costs & expenses, Investigation costs & expenses, admission, offer or payment, or assumed obligation to which it has not consented in writing.

- (b) QBE shall be entitled if they so desire, to take over and conduct, in the name of the Insured, the defence or settlement of any Claim at any time. In the event that this occurs, QBE will then have sole control of the Claim.
- (c) QBE may, if it believes that any Claim will not exceed the Deductible, instruct the Insured to conduct the defence of the Claim. In such situation, QBE will reimburse the Insured for all reasonable Costs & expenses in the defence of the Claim in the event that any payment made to dispose of the Claim exceeds the Deductible.
- (d) If QBE retains lawyers to conduct, in the name of the Insured, the investigation, defence or settlement of any Claim, those lawyers will only act on behalf of QBE in relation to any issue regarding the Insured's entitlement to indemnity from QBE and they will not act on the Insured's behalf in respect of any such issue. Any information that is received by lawyers retained by QBE in the course of investigating, defending or settling any Claim against the Insured can be provided to QBE and relied upon by QBE in relation to any issue that may arise regarding QBE's liability to indemnify the Insured. In relation to any such information, the Insured waives any claim that it may have for legal professional privilege as between the Insured, the lawyers retained by QBE and QBE.
- (e) The lawyers retained by QBE to conduct the investigation, defence or settlement of any Claim, may provide advice to QBE on any issue regarding QBE's liability to indemnify the Insured and, whilst doing so, may continue to act in the investigation, defence or settlement of the Claim on behalf of both QBE and the Insured.
- (f) The Insured agrees that all communications between QBE and lawyers retained by QBE to act in the conduct of the investigation, defence or settlement of any Claim which relate to the Insured's entitlement to indemnity from QBE are privileged as between QBE and the lawyers and the Insured agrees that it is not entitled, under any circumstances, to access or obtain any such communications.
- (g) If any actual or apparent conflict arises between the interests of QBE and the Insured's interests, the lawyers retained by QBE to conduct the investigation, defence or settlement of any Claim may cease acting on behalf of the Insured and may continue to act on behalf of QBE in relation to any dispute between QBE and the Insured with respect to the Insured's entitlement to indemnity from QBE.

5.3 Insured's right to contest

In the event that QBE recommends a settlement in respect of any Claim and the Insured does not agree that such Claim should be settled, then the Insured may elect to contest such Claim. PROVIDED ALWAYS THAT QBE's liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Costs & expenses incurred with QBE's written consent up to the date of such election, less the Deductible.

5.4 Reporting and notice

- (a) The Insured shall give to QBE written notice as soon as practicable of any Claim made against an Insured PROVIDED ALWAYS THAT such written notice is given to QBE during the Period of cover in which the Claim is made.

- (b) Notice of any Claim shall be given in writing to QBE, and delivered to:

The Claims Manager
Professional Liability Claims
QBE Insurance (Australia) Ltd
85 Harrington St Sydney NSW 2000

5.5 Senior Counsel clause

- (a) QBE shall not require the Insured to contest any Claim unless a Senior Counsel (to be mutually agreed upon by the Insured and QBE) shall advise that such Claim should be contested.
- (b) In formulating such advice, Senior Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely Costs & expenses and the prospects of the Insured successfully defending the Claim.
- (c) The cost of such Senior Counsel's opinion shall be regarded as part of the Costs & expenses.

5.6 Subrogation

In respect of any Claim covered by this Policy, and without limiting QBE's rights at law, QBE shall be subrogated to all the Insured's rights of recovery, and the Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable QBE effectively to bring suit in the name of the Insured.

The Insured shall not, without first obtaining the written consent of QBE, do anything or fail to do anything which excludes, limits or prejudices QBE's rights of subrogation. In particular, without limiting the operation of this provision, the Insured shall not enter into any contract or agreement which excludes, limits or prejudices a right of recovery which the Insured may have in respect of any Claim covered by this Policy.

Section 6: General Conditions

6.1 Alteration to risk

The Insured shall give to QBE written notice as soon as practicable of any material alteration to the risk during the Period of cover including but not limited to:

- (a) an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- (b) any material change in the nature of the professional services offered by an Insured.

Where such notice is given and/or where there is any material alteration to the risk QBE shall be entitled to cancel this Policy in accordance with the Insurance Contracts Act 1984.

6.2 Assignment of interest

No change in, or modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy and signed by an authorised employee of QBE.

6.3 Cancellation

- (a) The Insured may cancel this Policy at any time by notifying QBE in writing, and QBE will allow a pro-rata refund of Premium for the unexpired Period of cover but such refund will never be greater than 50% of the Premium.
- (b) QBE may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984, and QBE will provide a pro-rata refund of Premium for the unexpired Period of cover but such refund will never be greater than 50% of the Premium.

6.4 Deductible

- (a) In respect of each Claim made against the Insured (or each loss or claim incurred by the Insured in respect of Policy Extensions 2.3 Loss of documents and 2.5 Official investigations & enquiries – costs & expenses) the amount of the Deductible shall be borne by the Insured at their own risk and QBE shall only be liable to indemnify the Insured for that part of any Claim (or any loss or claim) which is in excess of the Deductible.
- (b) In the event of a claim by the Insured under this Policy, the Insured shall, if directed by QBE, pay to QBE (or as is directed by QBE) the Deductible within seven (7) working days. Any delay, failure or refusal by the Insured to pay the Deductible will entitle QBE to deduct such amount from any amount(s) required to settle any Claim or judgement, order, or any other payment to be made by QBE under this Policy. In the event that a failure or refusal to grant access to monies for any Deductible results in a failure of a settlement or an increase in Costs & expenses, QBE's liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Costs & expenses incurred with QBE's written consent up to the date of such failure or refusal, less the Deductible.
- (c) Where QBE has elected to pay all or part of the Deductible in respect of any Claim (or any loss or claim), the Insured shall, within seven (7) working days from the date of such payment, reimburse QBE for such payment.
- (d) In respect of any Claim (or any loss or claim) where the amount of the Claim (or any loss or claim) is less than the amount of the Deductible, the Insured shall bear all Costs & expenses associated therewith unless QBE shall have agreed to meet such Costs & expenses pursuant to Insuring Clause B.
- (e) Where the Deductible is expressed in the Schedule to be inclusive of Costs & expenses then the Insured will pay all Costs & expenses, up to the amount of the Deductible, incurred by QBE pursuant to the engagement of advisers considered necessary by QBE to determine the liability of the Insured and to resolve the Claim (or loss or claim).
- (f) Any Costs & expenses incurred by QBE to determine whether QBE has a liability to indemnify the Insured under this Policy shall not be subject to the Deductible but shall be borne by QBE.

6.5 Limit of indemnity

- (a) Where there is no Aggregate limit of indemnity specified in the Schedule, QBE's total liability under this Policy for any one Claim, including Costs & expenses, and in the aggregate in respect of all Claims, including Costs & expenses, shall not exceed the Limit of indemnity specified in the Schedule.
- (b) Where QBE has agreed to provide an Aggregate limit of indemnity in accordance with Optional Extension 3.1 then QBE's total liability under this Policy for any one Claim, including Costs & expenses, shall not exceed the Limit of indemnity specified in the Schedule, and QBE's total liability in the aggregate in respect of all Claims, including Costs & expenses, shall not exceed the Aggregate limit of indemnity specified in the Schedule.
- (c) Where the Limit of indemnity is expressed in the Schedule to be exclusive of Costs & expenses, QBE agrees to pay Costs & expenses in addition to the Limit of indemnity. PROVIDED ALWAYS THAT if a payment is made to dispose of a Claim which is in excess of the Limit of indemnity available under this Policy, QBE's liability for such Costs & expenses shall be such proportion thereof as the Limit of indemnity available under this Policy bears to the amount paid to dispose of the Claim.

6.6 Multiple claims

- (a) All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under this Policy.
- (b) Where a single act, error, or omission gives rise to more than one Claim, all such Claim(s) shall jointly constitute one Claim under the Policy, and only one Deductible shall be applicable in respect of such Claim. Furthermore, if there is an Aggregate limit of indemnity, only one Limit of indemnity will be applicable in respect of such Claim.

6.7 Policy construction and interpretation

- (a) The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the law of the state, territory or country in which this Policy is issued, being the Place of Issue specified in the Schedule, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of such state, territory or country. If no Place of Issue is shown in the Schedule it is agreed that the Place of Issue is Sydney, New South Wales, Australia.
- (b) The marginal notes and titles of paragraphs in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- (c) Under this Policy, the masculine includes the feminine and the singular includes the plural and vice versa and reference to a person includes a body corporate, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.

Section 7: Definitions

7.1 Aggregate limit of indemnity

“Aggregate limit of indemnity” shall mean the amount shown as the Aggregate limit of indemnity in the Schedule. If no amount is shown, then the Aggregate limit of indemnity in respect of all Claims under this Policy is no greater than the Limit of indemnity.

7.2 Bodily injury

“Bodily injury” shall mean physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any person.

7.3 Claim

“Claim” shall mean:

- (a) The receipt by the Insured of any written notice of demand for compensation made by a third party against the Insured.
- (b) Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the Insured which contains a demand for compensation made by a third party against the Insured.

7.4 Computer equipment

“Computer equipment” shall mean computer equipment and shall include but not be limited to any, or any combination or part of data, computer hardware, operating system, application, software, and computer chip including microprocessor chip or embedded control logic, and irrespective of by whom it is owned or operated.

7.5 Conflict

“Conflict” shall mean:

- (a) a conflict of duty and duty, where an Insured acts for a client whilst being subjected to a contrary interest, being an interest of another client; or
- (b) a conflict of interest and duty, where an Insured acts for a client whilst being subjected to a contrary interest, being a personal advantage interest.

7.6 Costs & expenses

“Costs & expenses” shall mean the reasonable legal costs and other expenses incurred by or on behalf of the Insured or by QBE in the investigation or defence of a Claim.

7.7 Deductible

“Deductible” shall mean the amount shown as the Deductible in the Schedule.

7.8 Documents

“Documents” shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

7.9 Employee

“Employee” shall mean any person employed under a contract of service or apprenticeship during or prior to commencement of the Period of cover.

7.10 Family member

“Family member” shall mean:

- (a) any spouse, domestic partner, or companion;
 - (b) any parent, or parent of the spouse, domestic partner or companion;
 - (c) any sibling or child;
- of an Insured.

7.11 Insured

“Insured” shall mean:

- (a) the Named insured;
- (b) any person who is, during the Period of cover, a principal, partner or director of the Named insured but only in respect of work performed while a principal, partner or director of the Named insured;
- (c) any person who is, during the Period of cover, an Employee of the Named insured but only in respect of work performed while an Employee of the Named insured; or
- (d) any former principal, partner, director or Employee of the Named insured, but only in respect of work performed while a principal, partner, director or Employee of the Named insured.

7.12 Insured's profession

“Insured's profession” shall mean the profession, as specified in the Schedule, which is conducted by the Named insured. If the Named insured should change its name and there is no other change which materially alters the risk, the Insured's profession will continue to be covered by this Policy.

7.13 Investigation costs & expenses

“Investigation costs & expenses” shall mean legal costs and other expenses incurred by or on behalf of the Insured or by QBE arising out of any legally compellable attendance by an Insured at any official investigation, examination or enquiry in relation to the conduct of the Insured's profession where such investigation, examination or enquiry may lead to a recommendation in respect of civil liability or civil proceedings which would be the subject of a Claim covered by this Policy.

“Investigation costs & expenses” does not include any fine, penalty or order for the payment of monetary compensation.

7.14 Limit of indemnity

“Limit of indemnity” shall mean the limit of QBE's liability under this Policy as specified in the Schedule.

7.15 Minor interest

“Minor interest” shall mean a direct or indirect control or ownership of less than 10% of the issued share capital and/or options of a public company or less than 10% of the value of any other company, entity or enterprise.

7.16 Named insured

“Named insured” shall mean the person, persons, partnership, company, corporation or other entity specified as the Named insured in the Schedule.

7.17 Period of cover

“Period of cover” shall mean the period specified in the Schedule.

7.18 Policy

“Policy” shall mean:

- (a) the Schedule, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein;
- (b) any endorsement attaching to and forming part of this Policy either at inception or during the Period of cover; and
- (c) the Proposal.

7.19 Pollutants

“Pollutants” shall mean:

- (a) any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals; or
- (b) any waste materials including materials recycled, reconditioned or reclaimed; or
- (c) any other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emission.

7.20 Premium

“Premium” shall mean the Premium specified in the Schedule or in any endorsement to the Schedule.

7.21 Proposal

“Proposal” shall mean the written proposal made by the Insured to QBE containing particulars and statements which, together with other information provided by the Insured, are the basis of this Policy and are considered as incorporated herein.

7.22 QBE

“QBE” shall mean QBE Insurance (Australia) Limited (ABN 78 003 191 035)

7.23 Schedule

“Schedule” shall mean the schedule to this Policy.

7.24 Senior Counsel

“Senior Counsel” shall mean a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court in the Commonwealth of Australia or the Dominion of New Zealand.

7.25 Subsidiary

“Subsidiary” shall mean:

- (a) any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the Named insured specified in the Schedule; or

- (b) any entity over which a Named insured is in a position to exercise effective direction or control.

7.26 Terrorism

“Terrorism” shall mean an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear.